Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte SATORU ICHIHASHI, MASAYOSHI KAI, RYUICHI OKAMURA, KUNIKAZU NEGISHI and TAKESHI MASAKI

Appeal No. 2003-2034
Application No. 09/667,727

HEARD: JANUARY 6, 2004

Before COHEN, FRANKFORT, and PATE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claim 3, the sole claim remaining in the application.

Appellants' invention pertains to an apparatus for simulating a ride on a vehicle in a form of a motorcycle. A basic understanding of the invention can be derived from a reading of claim 3, a copy of which appears in the APPENDIX to the main brief (Paper No. 11).

As evidence of obviousness, the examiner has applied the documents listed below:

Koyama et al. (Koyama)	6,234,800	May 22, 2001 (filed Jun. 21, 1999)
Ichizawa et al. (Japan) (Honda)[1]	7-92897	Apr. 7, 1995

The following rejections are before us for review.

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Honda in view of Koyama.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the final rejection and the answer (Paper Nos. 9 and 13), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 11 and 15).

[1] Our understanding of this foreign language document is derived from a reading of a machine-assisted translation thereof prepared in the United States Patent and Trademark Office. A copy of the translation is appended to this opinion.

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the Board has carefully considered appellants' specification and claims, the applied teachings,[2] and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The indefiniteness issue

We do not sustain the rejection of claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite.

The examiner is of the view that the phrase in line 9 of claim 3, "in an erected posture", is indefinite (page 2, Paper

[2] In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the Board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

No. 9 and page 3, Paper No. 13). We disagree for the following reasons.

In light of the underlying specification and drawings, it is quite apparent to this panel of the Board that one skilled in the art at issue would readily comprehend that the linear actuators 7 are oriented in an erect (upstanding) posture in the apparatus, as visually discernible in Figs. 1 through 3. Akin to appellants' point of view (main brief, pages 5 through 7 and reply brief, pages 1 and 2)), we are of the opinion that the term "in an erected posture", in the context of the claim, clearly means or denotes that the pair of linear actuators are upstanding in orientation, as opposed to being horizontally positioned, for example. Thus, the phrase "in an erected posture" is an understandable limitation which does not render claim 3 indefinite.

The obviousness issue

We do not sustain the rejection of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Honda in view of Koyama.

Appellants' claim 3 sets forth an apparatus for simulating a ride on a vehicle in a form of a motorcycle with the feature, inter alia, of each of a pair of linear actuators being coupled to a lower portion of a front column mounting a handle on an upper end thereof for steering.

The examiner acknowledges in the final rejection (Paper No. 9) that the Honda patent fails to disclose linear actuators attached to the front lower surface of a vehicle.[3] However, as perceived by the examiner, Koyama's teaching of two actuators 150, 152[4] attached to a lower front portion of a vehicle body (Figs. 1 through 4) would have made it obvious to attach the linear actuators of Honda to the front of the vehicle (pages 2 and 3, Paper No. 9 and pages 3 through 5, Paper No. 13). As explained below, we do not share this point of view.

From our perspective, one having ordinary skill in the art would have readily appreciated the overall configuration and

[3] In particular, the claim language, as noted, requires linear actuators coupled to a lower portion of a front column mounting a handle.

[4] The patentee Koyama discloses intermediate links 150, 152, not linear actuators.

operation of the riding simulation apparatus of Honda as simply a distinctly different alternative to the particular arrangement and operation of the Koyama simulator, and vice versa. Clearly, the Honda simulator is moved by hydraulic cylinder actuators 3 to, for example, rotate the vehicle about the roll axis line X. In contrast, the rider of the Koyama simulator rocks a four-link mechanism in a lateral direction (Figs. 3 and 4), with the simulator returning to its neutral position under the influence of torsional rubber springs. Thus, notwithstanding the inclusion of two links 150, 152 at the front of the Koyama simulator (Figs. 1 and 2), we nevertheless do not perceive that one having ordinary skill in the art would have derived a suggestion therefrom to selectively rework the simulator of Honda, as proposed by the examiner, to effect the apparatus set forth in appellants' claim 3. It is apparent to us that only reliance upon impermissible hindsight and appellants' own disclosure, and not the applied prior art, would have allowed one to alter the Honda simulator based upon the Koyama teaching. It is for these reasons that the obviousness rejection cannot be sustained.[5]

[5] In the response to the argument section of the answer (pages 3 and 4), the examiner departs from the basis set forth in the final rejection and refers to Fig. 22 of Koyama and Figs. 3 and 4 of Honda. Fig. 22 of Koyama simply teaches a link-length
(continued...)

In summary, this panel of the Board has not sustained any of the rejections on appeal.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
WILLIAM F. PATE, III Administrative Patent Judge	)	

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[5](...continued)
adjusting mechanism. As we see it, one of ordinary skill in the art would still understand this form of Koyama simulator to be rocked to its lateral positions, as earlier discussed, unlike the Honda simulator. The Honda simulator of Figs. 3 and 4 clearly reveals an arrangement of horizontally oriented hydraulic cylinders 3, not the claimed actuators disposed in an erected posture.

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